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In re Application of
Christof CALLSEN et al
Application No.: 09/700,371
PCT No.: PCT/EP99/02990
Int. Filing Date: 03 May 1999
Priority Date: 15 May 1998
Attorney's Docket No.: 225/49317
For: EXPANSION LANCE ASSEMBLY

DECISION ON
PETITION
UNDER 37 CFR 1.181

This decision is responsive to applicants' "TO REINSTATE APPLICATION ABANDONED DUE TO PTO ERROR" filed 20 August 2001, which is being treated as a petition under 37 CFR 1.181 requesting the acceptance of the executed declaration and power of attorney form, and the withdrawal of the notice of abandonment mailed on 06 August 2001.

BACKGROUND

On 03 May 1999, applicants filed international application PCT/EP99/02990, which claimed priority of an earlier European application filed 15 May 1998. A copy of the international application was transmitted on 25 November 1999 to the USPTO from the International Bureau. A DEMAND was timely filed on 24 August 1999 electing the United States. Accordingly, the thirty (30) month time period for paying the basic national fee in the United States of America expired at midnight on 15 November 2000.

On 15 November 2000, applicants filed a Transmittal Letter for entry into the national stage in the United States of America. Filed with the Transmittal Letter was, inter alia, the requisite basic national fee, and an English translation of the international application. No oath or declaration of the inventors accompanied the transmittal letter.

On 14 December 2000, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371 IN THE UNITED STATES DESIGNATED/ELECTED OFFICE (DO/EO/US)" (Form PCT/DO/EO/905) which informed applicant, inter alia, that an "Oath or Declaration of the inventors, in compliance with 37 CFR 1.497(a) and(b), identifying the application by International application number and international filing date" must be submitted within one month from its 14 December 2000 date of mailing or by 31 months from the priority date, whichever is later, in order to avoid abandonment of the national stage application.

On 06 August 2001, a Notification of Abandonment was mailed to applicant's representative. It stated that the applicant has failed to properly respond to the Notification of Missing Requirements (Form PCT/DO/EO/905), mailed 14 December 2000 within the time period set therein. See the attached Notification of a Defective Response (Form PCT/DO/EO/916).

On 20 August 2001, applicants filed the instant petition accompanied, inter alia, with an executed declaration, power of attorney, and assignment form.

DISCUSSION

MPEP section 711.03(c) establishes the requirement to show nonreceipt of an Office action. It states that "the showing required by the notice to establish the failure to receive an Office action must consist of a statement from the practitioner stating that the Office action was not received by practitioner and attesting to the fact that a search of the filed jacket and docket records indicate that the Office action was not received. **A copy of the docket record where the non-received Office action would have been entered had it been received and docketed must be attached to and referenced in practitioner's statement.**"

A review of the petition reveals that petitioner has not compiled with the requirements set forth in section 711.03(c), which requires a copy of the docket record where the nonreceived Office communication would have been entered had it been received and docketed. Petitioner's statements on page 2 of the above application by itself is insufficient to establish failure to receive the Office communication without any corroborating evidence, e.g., a log showing the mailed received during the time period the office communication would have been received or a tickler sheet for 14 January 2001. In other words, to establish a showing nonreceipt of the Notification of Missing Requirements would require, at a minimum, a copy of docket within the time period that the Office action would have been received or a copy of the docket report showing all replies docketed for a date of one month from the mail date of the nonreceived Office action.

Accordingly, petitioner has not met the requirements under MPEP section 711.03(c) to establish nonreceipt of an Office action, and the withdrawal of abandonment of the above captioned- application at this time is not appropriate.

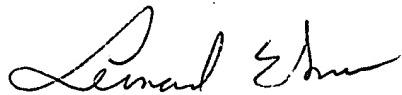
CONCLUSION

The petition under 37 CFR 1.181 is **DISMISSED** without prejudice.

The above-captioned application remains **ABANDONED**.

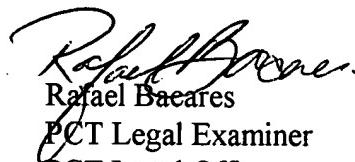
If reconsideration of the merits of the petition under 37 CFR 1.181 is desired, applicant must file a request for reconsideration within **TWO (2) MONTHS** from the mail date of this Decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.181." Extensions of time are available under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be addressed to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, with the contents of this letter marked to the attention of the PCT Legal Office.



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